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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,397	04/13/2007	John Hatrick-Smith	550639.00007	2415
26710 7590 10/29/2007 QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE SUITE 2040 MILWAUKEE, WI 53202-4497			EXAMINER WENDELL, MARK R	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 10/29/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/576,397	HATRICK-SMITH, JOHN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mark R. Wendell	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>20061010</u> . | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Claim Objections***

Claims 1-4, 11, and 14 are objected to because of the following informalities: Claim 1, the first occurrence of the word "the" in line 2 should be deleted. Claim 2, the first occurrence of the word "the" in line 2 should be deleted. Claim 3 ends with two periods; one should be deleted. Claim 4, the phrase "of the or each fold line" in lines 3 and 4 should be re-worded. Claim 11 should start with an uppercase "A" and does not depend on a specific claim. For examination purposes, the examiner will assume the claim depends from claim 9. Claim 14 should start with an uppercase "A." Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that they fail to point out what is included or excluded by the claim language. These claims are omnibus type claims.

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 8-11, 15-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Helmettsie et al. (US 2005/0086736). Regarding claims 1 and 15, Helmettsie illustrates in Figure 4, a shower or bath wall liner panel including panel sections (24, 26) on either side of a fold down panel (28), and a non-planar formation integrally formed in the panel at least on one side of the fold from which after installation of the liner panel one or more of a shelf or basket, soap dish, flannel rail, or a step (see Figure 10) may be supported within a shower enclosure or above a bath.

Regarding claims 9-11 and 16, Helmettsie illustrates in Figures 1 and 4 a method of forming a shower or bath wall liner panel including forming in a sheet material two integral opposing non-planar formations (shelves on panels 24 and 26) from which when the panel is folded with a fold line down the panel and between the two molded formations, one or more of a shelf, soap dish, flannel rail, or step may be supported, or which form integrally one or more of a shelf or basket, soap dish, flannel rail, or step,

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and forming a fold line down the panel between the two molded formations in the panel.

The examiner notes the fold line is the line between panels 24 and 26 and panel 28 is connected to both 24 and 26 with a shelf located in the corresponding slot (shown in Figure 4) to integrally form a continuous shelf.

Regarding claims 2 and 8, Helmettsie illustrates in Figure 4 a shower or a bath wall liner panel including panel sections (24, 26) on either side of a fold down panel (28), and opposing non-planar formations integrally formed in the panel on either side of the fold from which after installation of the liner panel one or more of a shelf, soap dish, flannel rail, or a step (see Figure 10) may be supported within a shower enclosure or above a bath or which form integrally one or more of a shelf or basket, soap dish, flannel rail, or step.

Regarding claim 3, Helmettsie illustrates in Figure 4 the wall liner panel divided into three sections (24, 26, 28) by two spaced fold lines down the panel with integral opposition non-planar formations from which one or more of a shelf, soap dish, flannel rail, or step may be supported (shelves on panels 24, 26), or which form integrally one or more of a shelf or basket, soap dish, flannel rail, or step, formed on either side of one or alternatively both fold lines down the panel, to provide shelves, soap dishes, flannel rails, and/or steps at one or two internal corners of the shower enclosure or over a bath.

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Regarding claim 4, Helmettsie illustrates in Figure 4 formations shaped and positioned so that when the panel is installed two said formations (shelves on 24 and 26) face each other on either side of the or each fold line (connections between 26 and 28 and 24 and 28).

Regarding claim 5, Helmettsie illustrates in Figure 4 the formations (shelves on panels 24 and 26) able to come together via a shelf placed in between in the provided slots of panel 28 to form a long, continuous shelf.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Helmettsie et al. (US 2005/0086736). It is described above what is disclosed by Helmettsie, however regarding claims 7 and 13 Helmettsie does not distinctly disclose the wall being formed of a thermoplastic. Helmettsie describes throughout the disclosure the wall and associated panels being plastic. It would have been obvious to one having ordinary skill in the art at the time of invention to make the wall and panels from a thermoplastic because it is well-known in the art that it is the easiest type of

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plastic to mold, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (In re Leshin, 125 USPQ 416).

Regarding claim 14, it is well known to fold paneled objects to occupy smaller volumes. The practice is, and has been, used for years within retail businesses. It would have been obvious to one having ordinary skill in the art at the time of invention to package the shower structure of Helmetsie via disconnecting or folding the structure into a box for the consumer to easily bring home to install.

Claims 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Helmetsie et al. (US 2005/0086736) in view of Salach (US 5671489). It is described above what is disclosed by Helmetsie, however regarding claims 6 and 12 Helmetsie does not disclose a handrail connected to the wall panels. Salach illustrates in Figure 1 and discloses in column 3, lines 61-62 a handrail mounted to two wall sections. It would have been obvious to one having ordinary skill in the art at the time of invention to have included the handrail of Salach to the wall panel structure of Helmetsie in order to provide better stability for people in the shower.



### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hanson (US 6425147) teaches a tub surround assembly put together via clips. Mustee (US 3751737) teaches free-standing shower stalls.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark R. Wendell whose telephone number is (571) 270-3245. The examiner can normally be reached on Mon-Fri, 7:30AM-5PM, Alt. Fri off, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Richard Chilcot  
Supervisory Patent Examiner  
Art Unit 3635

MRW  
October 22, 2007